Southside Hospital *and* New York's Health & Human Service Union 1199, Service Employees International Union, AFL-CIO. Case 29–CA–25210

May 12, 2005

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

On September 19, 2003, Administrative Law Judge Jesse Kleiman issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an exception.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order as modified.[2]

The judge found that the Respondent violated Section 8(a)(5) and (1) when it unilaterally changed the terms and conditions of employment of the "nutrition supervisors" without affording the Union notice and an opportunity to bargain. We agree. We also affirm the judge's finding that the Respondent violated Section 8(a)(3) of the Act by changing its nutrition supervisors' terms and conditions of employment because they joined and supported the Union.

The Respondent operates a hospital in Bay Shore, New York. Several employees manage the nutritional needs of patients in the hospital. Prior to September 6, 2002,[3] three employees had the title of nutrition supervisor-I, and three employees had the title of nutrition supervisor-II.[4] Nutrition supervisors-I assessed patients' individual nutritional needs, and made individual dietary recommendations. Nutrition supervisors-II distributed packets containing nutritional information and puzzles, and recorded patients' food preferences and allergies.

On September 5, the Union won a Board-supervised election in a bargaining unit that included the nutrition supervisors. The Respondent was aware that some of the nutrition supervisors supported the Union.

On September 6, Linda Boire, the Respondent's chief clinical dietician and the nutrition supervisors' immediate supervisor, called the nutrition supervisors to her office and presented them with a letter advising them of several adverse changes to their employment.[5] The letter stated: "THE EMPLOYEES HAVE VOTED TO JOIN 1199. *As such*, all supervision and non-union tasks will be removed from your job description." (Italics added.)

To establish a violation of Section 8(a)(3) under *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), the General Counsel must first prove, by a preponderance of the relevant evidence, that an employee's union activity was a motivating factor in the employer's adverse action against that employee. Proof of such discriminatory motivation may be based on either direct or circumstantial evidence. *Robert Orr/Sysco Food Services, LLC*, 343 NLRB No. 123 (2004). The words "as such" in the Respondent's September 6 letter expressly tied the Respondent's adverse employment action to the employees' choice of union representation. Accordingly, the General Counsel met his initial burden under *Wright Line*.[6]

Once the General Counsel meets his initial burden, the burden of persuasion shifts to the employer to establish that it would have taken the same adverse action against the employee, even in the absence of the employee's union activity. *Donaldson Bros. Ready Mix, Inc.*, 341 NLRB No. 124, slip op. at 9 (2004). A respondent supports, rather than rebuts, the inference that it acted for unlawful reasons when it proffers false explanations for

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3rd Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] In exceptions, the General Counsel argues that the judge erred in ordering the Respondent to rescind the unlawful changes in the unit employees' terms and conditions of employment only at the Union's request. We find merit in the General Counsel's exception and will delete "on request by the Union" from the judge's recommended Order and notice.

We shall also modify the judge's recommended Order to be consistent with *Excel Container, Inc.*, 325 NLRB 17 (1997).

[3] All dates refer to 2002, unless otherwise indicated.

[4] All parties agree that the nutrition supervisors were not supervisors within the meaning of Sec. 2(11), despite their titles.

[5] The Respondent transferred responsibility over assessing patients' nutritional needs from the nutrition supervisors-I to registered dieticians who were not in the bargaining unit, and gave the nutrition supervisors-II the tasks that diet clerks had performed prior to the election. Additionally, the Respondent changed the nutrition supervisors' job titles, shortened their lunchbreaks, and required 2 weeks notice for time off, among other changes.

[6] We agree with the judge that the timing of the Respondent's adverse employment action further supports the inference that antiunion animus motivated the Respondent. The judge also properly relied on the falsity of the Respondent's explanation as evidence that antiunion animus motivated its actions. See *Cox Communications Gulf Coast, LLC*, 343 NLRB No. 26 (2004). However, we need not rely on such circumstantial evidence in light of the direct evidence in this case.

Because we agree with the judge that the General Counsel met his burden under *Wright Line*, supra, we find it unnecessary to pass on whether the Respondent's conduct was "inherently destructive" of the nutrition supervisors' Sec. 7 rights.

its actions, however. *Cox Communications Gulf Coast, LLC*, supra; *Limestone Apparel Corp.*, 255 NLRB 722, 722 (1981), enfd. 705 F.2d 799 (6th Cir. 1982). The judge found that the Respondent's explanations for adversely changing the terms and conditions of the nutrition supervisors' employment were pretextual, and the record amply supports the judge's finding. We recognize that, prior to the election, Respondent Supervisor Linda Boire told employees that, at some point in the future, the Respondent would be looking to have the dietary assessment work shifted from nutrition supervisors to dieticians. However, there was no firm decision as to when, or even whether, this would be done. To the contrary, the Respondent subsequently (July 25) sent a memo to employees, telling them that no change was contemplated. However, on the day after the election, the Respondent abruptly announced the change and attributed it to the Union's election victory. In these circumstances, we do not believe that the Respondent can rightfully claim that it was simply carrying out a preelection decision.

Our dissenting colleague relies on the Respondent's discredited explanations for its actions to find that the General Counsel did not, by a preponderance of the evidence, establish a violation. Contrary to our dissenting colleague, the Respondent did not—with credible evidence—"explain the timing" of its changes. The judge concluded that the Respondent's reasons for its actions were false. False explanations cannot establish "legitimate business reasons." Rather, their falsity demonstrates that they did not exist or the Respondent did not rely on them. *Limestone Apparel Corp.*, 255 NLRB at 722. Therefore, the inference that antiunion animus motivated the Respondent's actions stands unrebutted by any credible evidence.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Southside Hospital, Bay Shore, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified below.

1. Substitute as follows for paragraph 2(a).

"(a) Rescind the unilateral changes implemented by the Respondent in the terms and conditions of its employees in the unit set forth herein in September 2002 found to be unfair labor practices and reinstate the terms and conditions of employment which existed regarding its employees in this unit prior to the Board election on September 5, 2002; bargain with the Union in good faith until an agreement or impasse is reached; and the Respondent should be further ordered to make whole unit employees for any loss of earnings and benefits occasioned by the Respondent's unlawful actions in the manner set forth in the remedy section of this decision."

2. Substitute the following for paragraph 2(e).

"(e) Within 14 days after service by the Region, post at its facility in Bay Shore, New York, copies of the attached notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director, after being signed by the Respondent's representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail at its own expense a copy of the notice to all current employees and former employees employed by the Respondent since September 6, 2002."

3. Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C. May 12, 2005

Robert J. Battista, Chairman

Wilma B. Liebman, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER SCHAUMBER, dissenting in part.

While I agree with the judge and my colleagues that the Respondent's unilateral changes to the unit employees' terms and conditions of employment violated Section 8(a)(5), I do not agree that the same actions violated Section 8(a)(3). In my view, the General Counsel failed to establish by a preponderance of the evidence that the Respondent's actions were motivated by antiunion animus.

The Respondent has a long history of bargaining with the Union concerning approximately 600 of its employees, and there is no evidence to suggest that this bargaining relationship has been anything other than harmonious. In fact, the evidence demonstrates that the Respondent began bargaining with the Union immediately following the election in this particular unit, and soon thereafter the parties reached an agreement to adopt the same basic language that is contained in the agreements covering the Respondent's other unionized employees.

With respect to the unilateral changes at issue, the Respondent does not dispute that it made several changes to terms and conditions of employment for some of its unit employees called "nutrition supervisors." As the judge recognized, the Respondent contemplated, prior to the election, plans to restructure the nutrition department but no plans to implement specific changes on a particular date had been finalized. However, Supervisor Linda Boire explained to the employees, well before the election, that she intended to gradually shift the responsibility for performing dietary assessments from nutrition supervisors to registered dieticians (through attrition), and that job changes would be a possibility in the future. Boire testified that these changes were intended to address some of the problems the Respondent had been experiencing, such as mistakes on menus, and the Respondent's practice would become more consistent with the similar practice of other area hospitals.

The record also supports the Respondent's assertion that it made the changes at issue for the purpose of conforming the newly represented unit employees' terms and conditions of employment to those of employees in other units already covered by a collective-bargaining agreement between the Respondent and the Union. For example, the employees at issue had been considered exempt from overtime requirements prior to the election. The change requiring employees to punch a timeclock was instituted in order to compensate these employees for overtime work, consistent with the Respondent's obligation to its other unionized employees.

All of this is not to say that the judge erred in finding that the Respondent violated Section 8(a)(5). It is to say, however, that these 8(a)(5) violations were not motivated by antiunion animus. To establish a violation of Section 8(a)(3) under *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), the General Counsel must first prove, by a preponderance of the evidence, that antiunion animus, an employee's protected conduct, was a substantial or motivating factor in the employee's adverse employment decision. *Manno Electric, Inc.*, 321 NLRB 278, 280 (1996). Here the judge relied solely on the timing of the changes, following the election, to support his conclusion that the General Counsel met his burden of proof. However, the Respondent explained the timing as resulting from its desire to avoid any unlawful interference with employee free choice prior to the election; in order to refrain from engaging in objectionable conduct, the Respondent wisely avoided taking actions that could have appeared to be an attempt to influence the pending election vote.

Further, as set forth above, the Respondent demonstrated several legitimate business reasons to account for the changes it made. While the Respondent's plan to restructure the nutrition department was not comprehensive enough to allow the Respondent to escape liability under Section 8(a)(5), it nonetheless establishes a legitimate business consideration that remains unrebutted by any evidence of unlawful motive. Further, even though the Respondent was not permitted to conform unit employees' terms of employment to those of its other unionized employees until it obtained the Union's agreement through bargaining, the Respondent's objective in this regard also provides insight into the lawful motive behind its actions. These legitimate business reasons are further supported by the existence of a harmonious bargaining relationship between the parties mentioned above.

We have found that the Respondent acted unlawfully by not bargaining with the Union prior to implementing these changes; however, it does not automatically follow that the changes were motivated by antiunion animus. Based on nothing more than timing and in the face of unrebutted, logical justification, my colleagues and the judge allow an 8(a)(3) violation to be bootstrapped to an 8(a)(5) violation. I cannot agree. There is simply no basis to support a finding that the General Counsel established, by a preponderance of the evidence, that the Respondent's unilateral changes were unlawfully motivated.

Dated, Washington, D.C. May 12, 2005

Peter C. Schaumber, Member

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT unilaterally change a 1-hour lunchbreak to a 30-minute lunch break with two 15-minute breaks.

WE WILL NOT unilaterally grant time off based on seniority order with only 2 weeks notice given.

WE WILL NOT unilaterally require unit employees to punch a timeclock.

WE WILL NOT unilaterally change the job titles of nutrition supervisors-I and II, their job duties and regularly scheduled workdays and hours.

WE WILL NOT in any like or related manner interfere with, restrain or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL rescind the unilateral changes we have implemented in the terms and conditions of our unit employees in September 2002 found to be unfair labor practices.

WE WILL reinstate the terms and conditions of employment of the unit employees prior to the Board election on September 5, 2002.

WE WILL, within 14 days from the date of this Order, offer employees who have been laid off, discharged, or otherwise suffered any change in position, duties, or status because of our unlawful conduct, full reinstatement to their former jobs and duties or, if those jobs or duties no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make employees whole for any loss of earnings and other benefits resulting from our unlawful actions, less interim earnings where applicable, plus interest.

WE WILL, within 14 days from the date of this Order, remove from our files any references to the unlawful changes in the status of our employees due to our unlawful actions and any wage and benefit changes resulting therefrom, and within 3 days thereafter notify the employees in writing that this has been done and that the Respondents' unlawful actions will not be used against them in any way.

SOUTHSIDE HOSPITAL

James P. Kearns, Esq., for the General Counsel.
Gerard Fishberg, Esq. (Cullen And Dykman Bleakley Platt, LLP), for the Respondent.
David M. Slutsky, Esq. (Levy, Ratner & Behroozi, P.C.), for the Union.

DECISION

STATEMENT OF THE CASE

JESSE KLEIMAN, Administrative Law Judge. Upon the basis of a charge dated October 15, 2002, filed with the Board by New York's Health & Human Service Union 1199, Service Employees International Union, AFL–CIO (the Union), a complaint and notice of hearing was issued on December 30, 2002, against Southside Hospital (the Respondent or Southside Hospital) in Case 29–CA–25210, alleging that the Respondent had made various unilateral changes in the terms and conditions of employment of its employees in violation of Section 8(a)(1), (3), and (5) of the National Labor Relations Act (the Act). By answer timely filed the Respondent denied violating the Act and raised certain affirmative defenses.

A hearing in this case was held before me in Brooklyn, New York, on April 9, 2003. After the close of the hearing the General Counsel and the Respondent filed briefs.

On the entire record and the briefs of the parties, and upon my observation of the witnesses, I make the following

FINDING OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent, a domestic corporation, has been engaged in the operation of a hospital with its principal office and place of business located at 301 East Main Street, Bay Shore, New York. During the past 12-month period, which period is representative of its annual operations in general, the Respondent, in conducting its business operations, derived gross annual revenues in excess of $250,000, and purchased and received at its Bay Shore facility products, goods, and materials valued in excess of $5000 directly from suppliers located outside the State of New York. The complaint alleges, the Respondent admits, and I find that the Respondent is now, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and a health care institution within the meaning of Section 2(14) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, the Respondent admits, and I find that the Union at all material times, has been a labor organization within the meaning of Section 2(5) of the Act. The complaint also alleges, the Respondent admits, and I find that the following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time, regular part-time and per diem technical employees, clinical assistants, addiction counselors and nutrition supervisors employed by Respondent at its Bay-Shore facility but excluding all other employees, managers, guards and supervisors as defined in Section 2(11) of the Act.

The complaint also alleges, the Respondent admits, and I find that on September 5, 2002, a majority of the employees in the unit selected the Union as their collective-bargaining representative in a Board election, and on September 23, 2002, the Union was certified by virtue of Section 9(a) of the Act as the

exclusive collective-bargaining representative of the employees in the unit.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. The Evidence

As set forth in the complaint, and admitted by the Respondent, on September 6, 2002, the day after the Board election, the Respondent made the following changes in the terms and conditions of the employees in the above unit:

(a) Changed a one-hour lunch break to a 30-minute lunch break with two 15-minute breaks;

(b) Time off was to be granted based on seniority order and only with two weeks notice being given;

(c) Required Unit employees to punch a time clock; and

(d) Changed the job title of nutrition supervisors.

Moreover, in late September, the Respondent changed the job duties and the regularly scheduled workdays and hours of the unit employees in the job titles of nutrition supervisor-I and nutrition supervisor-II.[1] The Respondent, in its answer, also admitted that after the election, it made these changes in the terms and conditions of these unit employees.

The Respondent, Southside Hospital, employed in its nutrition department, prior to September 2002, registered dieticians and nutrition supervisions-I and II and other employees to deal with the nutrition needs of its patients. Nutrition supervisors-I, according to General Counsel's witness, Hope Casey Crucilla,[2] were mainly responsible for performing dietary assessments of patients "visiting patients, assessing their nutritional needs, their diet histories, doing patient rounds with the doctors, and meeting with the nursing staff, the other ancillary staff, and doing nutritional assessments of the patients and the, medical records." Crucilla testified that 95 percent of her time was spent doing nutritional assessments. Prior to the election, Crucilla worked with two other nutrition supervisors-I. These three employees worked various shifts during the week, rotated weekend assignments, were permitted to change shifts among themselves, and were not required to punch a timeclock. The employees were allowed to take a 1-hour lunchbreak. Employees completed a form and submitted it to their supervisor prior to taking time off but no advance notice was required. Linda Boire, chief clinical dietician was their supervisor.

At the time of the election on September 5, 2002, there were also three nutrition supervisors-II working for the Respondent. These employees visited patients, completed patient satisfaction surveys, and received special meal requests from patients. Prior to the election, the nutrition supervisors-I and IIs shared an office with the registered dieticians.

On September 5, 2002, the nutrition supervisors along with other unit employees elected to select the Union as their collective-bargaining representative. On September 6, 2002, the day after the election, the nutrition supervisors' employees were summoned individually to meet with their supervisor, Linda Boire, and the Director of Nutrition Linda Allison. At this meeting, Boire handed each employee a letter and advised them of changes in their employment.

The letter reads as follows:

> As You Know, The Employees Have Voted to Join 1199.
>
> As such, all supervision and non-union tasks will be removed from your job description.
>
> Your job title (nutrition supervisor-I) is Dietary Technician, which requires an Associate Degree in Dietary Technology from an accredited college. . . . You are hereby notified that as of Oct. 1, your days off and scheduled times may be changed. . . . Time off will be decided by seniority and 2 weeks notice is needed.
>
> You will be entitled to 2–15 minute breaks and 1/2 hour for lunch.

The employees were also required to punch a timeclock at the beginning and end of the workday, which was not required of the nutrition supervisors previously.

Additionally, the nutrition supervisors-I job title was changed to dietary technician while nutrition supervisors-II job titles to nutrition assistants. The day after the election, the registered dieticians who are not in the unit were moved to a separate office from the nutrition supervisors-I and II employees. The reclassification entailed a change in the employees responsibilities. Nutrition supervisors-I employees (now called dietary technicians) whose previous main responsibility was to perform dietary assessments on patients, were now assigned the tasks of visiting new patients, educating them on basis diets, and providing them with a packet from the nutrition department containing a copy of the diet, puzzles, and coupons. Nutrition supervisos-I (dietary technicians) no longer performed patient assessments but simply made a list of patients who needed dietary assessments and gave such lists to the registered dieticians who exclusively performed the nutritional assessments. Registered dieticians have bachelors degrees in clinical nutrition.

Furthermore, after the election, the nutrition supervisors-I employees were essentially assigned the former tasks of the nutrition supervisors-II employees. Nutrition supervisors-II employees had previously performed the task of distributing the nutrition packets to new patients and recording patient food preferences and allergies. After the election, the nutrition supervisors-II (now called nutrition assistants) were now required to write patient's names, room numbers, and type of diets on menus for the next day, and arrange the menus according to the patient floors. Prior to the election, these responsibilities were performed by the diet clerks.

Linda Boire, called as a witness for the Respondent, testified that when she was hired on December 1, 2001, as chief clinical dietician at Southside Hospital, in charge of the clinical division of the Respondent's food and nutrition department she

[1] It should be noted that all the parties agree, and the record evidence supports the assumption that the positions of nutrition supervisors-I and nutrition supervisors-II, despite the title, are not supervisors as contemplated within the meaning of Sec. 2(11) of the Act.

[2] Crucilla had worked at the hospital for approximately 10 years and held the position of nutrition supervisor-I until her title was charged in September 2002. She has an Associate Degree in Dietary Technology.

found that this department had "quite a lot of problems" requiring some changes one of which was to replace all nutrition supervisors-I with registered dieticians as they left, and that there would be possible job changes in the future. In March 2002, Boire advised the employees of the above, that in the future "we were looking to have all RD's on the floor . . . no one was going to lose their job [and] we would reevaluate things as time went by." She stated that she subsequently, learned about the Union's organizing campaign "a few weeks before the election" and did not want to make any drastic changes in the departments' operation before that time.

Boire testified that after the election changes were instituted because "there were many things not working, . . . there were a lot of mistakes on menus." There was now a need to separate union and nonunion work, i.e., assessing and evaluating patients performed by nutrition supervisors-I was considered nonunion work as this was to be performed hereinafter by registered dieticians only. Boire also justified the need for employees to now punch a timeclock in order to keep track of overtime.

Boire related that prior to September 2002, a little less than half the work of nutrition supervisors-I was narrative writing of patient assessments, work typically performed by registered dieticians in other hospitals. She stated that in terms of their education background and experience, the nutrition supervisors-I at Southside would normally be diet technicians, who generally screen and educate patients under the direction of a registered dietician. Nutrition supervisors-II, are now called nutrition assistants. Boire testified that "the only thing the diet techs (previously nutrition supervisors-I) are not doing right now that they were doing before is full evaluation on high risk nutrition patients and making recommendations to their physicians, which in my opinion is not something they should have been doing anyway."

Boire testified that, "we were really in the process of restructuring for a long time. There were a lot of changes made all year long." Boire related that after deciding on the first day she arrived at Southside that registered dieticians should perform patient assessments, when the nutrition supervisors voted for union representation they were "freed up" to perform more of the clerk duties in the diet office, "because . . . that was their union job." She stated that assessments were nonunion functions and were thus separated from union job duties so that there would be no overlap between union and nonunion work.

Daniel Battiste, director of human resources at Southside Hospital, called as a witness for the Respondent, testified that prior to the election, the union represented approximately 600 employees at Southside Hospital and covered by the League of Voluntary Hospitals Collective-Bargaining Agreement. The nutrition supervisors-I and II constituted a new residual group and a "verbal agreement" between Southside Hospital and the Union was to "use the boilerplate language basically of the League contract, to apply to them but economic issues would be negotiated separately . . . ." Battiste stated that under the management-rights clause of the League Agreement, the Respondent has a right to change job descriptions, scheduling or moving employees but by seniority, changing duties, lunch and break requirements.

Moreover, Battiste stated that the titles of nutrition supervisors-I and II were exempt titles prior to becoming union positions, not subject to overtime. When they became union positions, they became nonexempt positions requiring accountability for their work hours and the need to punch a timeclock. Battiste testified to at least two negotiation sessions had with the Union soon after the election concerning the changing of titles, hours or days of work and schedule changes of nutrition supervisors, and the application of the League Agreement boilerplate language to the nutrition supervisors positions.

Credibility

Regarding the credibility of the respective witnesses, after carefully considering the record evidence, I have based my findings on my observation of the demeanor of the witnesses, the weight of the respective evidence, established and admitted facts, inherent probabilities, and reasonable inferences which may be drawn from the record as a whole. *American Tissue Corp.*, 336 NLRB 435 (2002); *New York University Medical Center*, 324 NLRB 887 (1997); *Gold Standard Enterprises*, 234 NLRB 618 (1978); *V & W Castings*, 231 NLRB 912 (1977); *Northridge Knitting Mills*, 223 NLRB 230 (1976). I tend to credit the testimony of General Counsel's witness Hope Casey Crucilla because her testimony was given in a forthright manner, consistent with other believable evidence in the record and most importantly much of her testimony was corroborated by one of the Respondent's key witnesses and admitted by the Respondent in its answer to the complaint. Further, based upon her demeanor I found her to be a believable and trustworthy witness.

This is not to say that I discredit all of the testimony of the Respondent's witnesses, but only when it is in conflict with testimony of the General Counsel's witness.[3] Significantly, much of the testimony of Linda Boire supported that of Crucilla's.

B. Analysis and Conclusions

The Unilateral Changes

Section 8(a)(5) and (d) of the Act obligate an employer to bargain with the representative of its employees in good faith with respect to "wages, hours and other terms and conditions of employment." *NLRB v. Borg-Warner Corp*., 356 U.S. 342 (1958); *Fiberboard Corp. v. NLRB*, 379 U.S. 203 (1964). Section 8(a)(5) also obligates an employee to notify and consult with a union concerning changes in wages, hours, and conditions of employment before imposing such changes without first giving the union an opportunity to bargain about them. *NLRB v. Katz*, 369 U.S. 736 (1962); *NLRB v. Pinkston-Hollar Construction Services*, 954 F.2d 306 (5th Cir. 1992).

An employer's obligation to bargain arises on the date a majority of the appropriate bargaining unit employees select the union as their representative. *Gulf States Mfs., Inc*., 261 NLRB 852, 863 (1982); *Howard Plating Industries*, 230 NLRB 178,

[3] It is not unusual that based upon the evidence in the record, the testimony of a witness may be credited in part, while other segments thereof are discounted or disbelieved. *Jefferson National Bank*, 240 NLRB 1057 (1979), and cases cited therein.

179 (1977). Moreover, unilateral changes made prior to the certification are not excused and absent compelling economic considerations for doing so, an employer acts at its peril in making unilateral changes in terms and conditions of employment during the period between an election and a union's certification, *Mike O'Connor Chevrolet*, 209 NLRB 701, 703 (1974). See also *Advertisers Mfg. Co.*, 280 NLRB 1185 (1986), citing *NLRB v. Laney & Duke Co.*, 369 F.2d 859, 866 (5th Cir. 1966). Additionally, the Board has held that it is no defense that such unilateral actions were made pursuant to an establish policy and without antiunion motivation. *Amsterdam Printing & Litho Corp.*, 223 NLRB 370 (1976), enfd. mem. sub nom. *Graphic Communications Local 259*, 559 F.2d 187 (D.C. Cir. 1977).

The Respondent admits that it made the changes alleged in the complaint. There is no evidence that it notified or bargained with the Union before implementing these changes. Further, the Respondent failed to produce evidence that these changes were necessary due to compelling economic considerations.

The Respondent alleges that it intended to change the duties of the nutrition supervisors prior to the Union organizing this unit. Linda Boire, the employees supervisor, testified that upon being hired by the Respondent on December 1, 2002, she decided to reorganize the nutrition dietary office. Boire stated that she felt that nutrition supervisors-I employees should not be performing nutritional assessments of patients, that these duties should be performed by registered dieticians. She related that this would limit mistakes on menus, and would make Southside Hospital similar to other area hospitals that solely used registered dieticians to perform assessments.

However, it appears from the facts of this case that although Boire may have contemplated the idea of restructuring the nutrition department, she did not intend to carry out her plan in the actual manner that it was handled after the election. Boire testified that she explained to the nutrition supervisors-I, in March 2002, before the Union was elected, that she was looking to have registered dieticians exclusively perform dietary assessments. She reassured the staff that no one would "lose their jobs" and as nutrition supervisors-I left their employment she would simply replace them with registered dieticians. There is no testimony that indicates that Boire informed the nutrition staff of the extensive changes in working conditions that occurred after the election. Boire only told the employees that job changes were a possibility in the future. The nutrition supervisors were under the expectation that their employment duties and hours would remain the same. There was no evidence presented that the Respondent ever intended to make such changes on September 6, 2002, absent the Union's successful campaign. In fact, Boire issued a memo dated July 25, 2002, where she set forth the responsibilities of the registered dieticians and nutrition supervisors which indicates that the nutrition supervisors' duties would continue to remain the same and they would continue to perform nutritional assessments as before. It appears strange, that if the Respondent intended to change these unit employees duties and job description on September 6, 2002, it would have issued an earlier memo on July 25 affirming their duties.

It can, thus, be concluded, that the Respondent saw the union election as an opportunity to make unilateral changes in employment conditions of the nutrition supervisors in order to accelerate their plan without having to bargain with the Union. Moreover, the Respondent reserved certain positions for union and nonunion employees. Since performing dietary assessments was traditionally considered nonunion work, the Respondent unilaterally transferred the nutrition supervisors away from their assessment duties and assigned them to clerical tasks, reserved for union workers using the nutrition employees voting for the Union as a pretext to establish a reason not to bargain with the Union as to the changes. The nutrition supervisors were unaware of any of these changes before the election and thus the Respondent was required to bargain with the Union about these changes.

The Hospital further asserts that it actually negotiated with the Union as to the changes in the terms and conditions of employment of the nutrition unit employees. The Respondent's witness Daniel Battiste, director of human resources, testified that Southside Hospital was in the process of negotiating with the Union regarding two other residual units in addition to the nutrition employees unit. According to Battiste, when the Hospital negotiated with the Union over other residual units in the past and those currently being considered, "boilerplate" language would be included in the signed collective-bargaining agreement, this language allegedly providing the Respondent with the authority to change job descriptions and sole discretion as to scheduling employees. But, Battiste admitted that the Hospital did not have a signed agreement with the Union to apply the "boilerplate" language to the nutrition unit immediately after the election. The Respondent in its brief states, "With regard to the 'boilerplate' language of the League Agreement, it was clearly the understanding between Local 1199 and the Hospital that the boilerplate language would be adopted for each of the three recently certified residual units." However, it appears from the record that the "boilerplate" language was to be included in any collective-bargaining agreement involving the nutrition unit when the agreement was finally adopted and not agreed by the Union to be applicable on September 6, 2002, the day after the election to any changes made by the Respondent to nutrition unit employees without having to bargain with the Union. See for example, *Gulf States Mfs., Inc.*, supra.

For all of the above, when the Respondent's admittedly made the changes in the terms and conditions of employment of the employees in the unit described herein, without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, in violation of Section 8(a)(1) and (5) of the Act.

The complaint also alleges that the Respondent violated Section 8(a)(1) and (3) of the Act. The Respondent denies this. There are two ways to look at the actions taken by the Respondent herein. First, "where such actions are inherently destructive" of Section 7 rights. Should this not be determined, then a different standard would apply. This second standard of rea-

soning behind the alleged 8(a)(3) violation would be that as set forth in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert denied 455 U.S. 989 (1982), and approved by the Supreme Court in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983).

In an 8(a)(3) violation that is found to be "inherently destructive," an employer's intent is "founded upon the inherently discriminatory or destructive nature of the conduct itself." *Erie Resistor*, 373 U.S. 221, 223 (1963). As the Supreme Court stated in *Erie Resistor*, an employer's conduct is found in such instances to:

> intend the very consequences which foreseeably and inescapably flow from his actions . . . because his conduct does speak for itself if it is discriminatory and . . . whatever the claimed overriding justification may be, it carries with it unavailable consequences which the employer not only foresaw but must have intended. [Id. at 228.]

In determining if the conduct is in fact therently destructive, the Board must balance the interests of the employees against the interest of the employer in operating his business. *International Paper Co*., 319 NLRB 1253 (1995), enf. denied 115 F.3d 1045 (D.C. Cir. 1997). The Supreme Court in *NLRB v. Great Dane Trailers*, 388 U.S. 26 (1967), set forth the criteria to determine the burden of proving the presence or absence of a discriminatory purpose. The Court ruled that no proof of antiunion motivation need be advanced and that a violation can be found if "it can reasonably be concluded that the employer's discriminatory conduct was 'inherently destructive' of important employee rights," despite evidence of business motivation. Though if the employer's actions are deemed to have a "comparatively slight" effect on Section 7 rights, than an employer's showing of a legitimate and substantial justification shifts the burden to the General Counsel to prove antiunion motivation.

As stated by the Supreme Court in *American Ship Bldg. Co. v. NLRB*, 380 U.S. 300 (1965), "There are some practices which are inherently so prejudicial to union interests and so devoid of significant economic justification . . . that the employer's conduct carries with it an inference of unlawful intention so compelling that it is juistifiable to disbelieve the employer's protestations of innocent purpose." 380 U.S. at 311.

When deciding whether the conduct of an employer is "inherently destructive" the Board applies four "guiding principles." *International Paper Co*., supra. First is that an employer's policy of directly attaching penalties to participation in protected union activities is inherently destructive of employee's statutory right to engage in those activities. Second is whether the conduct is potentially disruptive of the opportunity for future employee organization and concerted activity, rather than only influencing the outcome of a particular dispute. Such conduct creates visible and continuing obstacles to the future exercise of employee rights. The third is whether the conduct demonstrated hostility to the process of collective bargaining and finally, whether the conduct had the effect of discouraging collective bargaining by making it appear futile to the employees.

The morning after the unit employees chose to be represented by the Union, the Respondent called individuals in the unit into the office and made major changes in their working conditions. In its own memo to the employees announcing the change, it states "AS YOU KNOW, THE EMPLOYEES HAVE VOTED TO JOIN 1199." The memo then recites changes that will result. At the trial, Supervisor Boire explained that after the election, she took away the assessment work for the nutrition supervisors-I employees because it was nonunion work. Boire also testified that the Respondent began requiring the employees to punch a timeclock after they chose the Union because they wanted to keep track of their time. Moreover, immediately after the election, the Respondent limited unit employees lunch period, began requiring employees to give 2 weeks notice before taking time off, required the timeclock to be punched, and changed employees scheduled workdays and hours. The nutrition supervisors-I employees had substantial job responsibilities prior to the election. These individuals made nutritional assessments on patients. They met with patients and consulted with doctors and other medical personnel. After the election, they were stripped of their duties and given the more menial job of handing out packets to new patients. The nutrition supervisors-I employees no longer exercise their discretion and have entirely different jobs than they performed the day prior to choosing the Union. The nutrition supervisors-II employees were also moved down to a more clerical position.

Based upon the evidence in this case I find that the Respondent's conduct was so "inherently destructive" of employee rights and not comparatively slight. See *Forest Products Co.*, 888 F.2d 72, 132 (10th Cir. 1989).

In *Wright Line*, supra, the Board established a test in which in order to establish a violation of Section 8(a)(3) of the Act, the General Counsel has the burden of persuading that the employer acted out of antiunion animus and that the employee's protected conduct was a substantial of motivating factor in the employer's action. If the General Counsel carries his burden of persuading that the employer acted out of antiunion animus, the burden of persuasion then shifts to the employer to prove its affirmative defense that it would have taken the same action even if the employees had not engaged in protected activity. *Workers Compensation Programs v. Greenwich Collieries*, 114 S.Ct. 2552–2558 (1994); *Southwest Merchandising Corp. v. NLRB*, 81 (1993); *Manno Electric, Inc.*, 321 NLRB 278 fn. 12 (1996); *Wright Line*, supra. Also see *J. Huizina Cartage Co. v. NLRB*, 941 F.2d 616 (7th Cir. 1991).[4] However, when an employer's motives for its action are found to be false, the circumstances may warrant an inference that the true motivation is an unlawful one that the employer desires to conceal. *Shattuck Dann Mining Corp. v. NLRB*, 362 F.2d 466 (9th Cir. 1960); *Limestone Apparel Corp.*, 255 NLRB 722 (1981); *Golden Flake Snack Foods*, 297 NLRB 594, 595 fn. 2 (1990). See also *Peter Vitale Co.*, 313 NLRB 970 (1994). The motive may be inferred from the total circumstances proved. Moreover, the

[4] An employer simply cannot present a legitimate reason for its actions but must persuade by a preponderance of the evidence that the same action would have taken place even in the absence of the protected conduct. *T & J Trucking Co.*, 316 NLRB 771 (1995); *GSX Corp. v. NLRB*, 918 F.2d 1351 (8th Cir. 1990).

Board may properly look to circumstantial evidence in determining whether the employer's actions were illegally motivated. *Association Hospital del Maestro*, 291 NLRB 198 (1988); *White-Evans Services Co*., 285 NLRB 81 (1987); *NLRB v. O'Hara-Midway Limousine Service*, 924 F.2d 692 (7th Cir. 1991). That finding may be based on the Board's review of the record as a whole. *ACTV Industries*, 277 NLRB 356 (1985); *Heath International*, 196 NLRB 318 (1972).

In carrying its burden of persuasion under the first part of the *Wright Line* test the Board requires the General Counsel first to persuade that antiunion sentiment was a substantial or motivating factor in the challenged employer decision. *Manno Electric, Inc*., supra at fn. 12; *Wright Line*, supra. In establishing unlawful motivation, the General Counsel must prove not only that the employer knew of the employees union activities or sympathies, but also that the timing of the alleged reprisals was proximate to the protected activities and that there was antiunion animus to "link the factors of timing and knowledge to the improper motivation." *Hall Construction v. NLRB*, 941 F.2d 684 (8th Cir. 1991); *Service Employees Local 434-B*, 316 NLRB 1059 (1995); *American Cyanamid Co*., 301 NLRB 253 (1991); *Abbey's Transportation Services*, 284 NLRB 698 (1987), enfd 837 F.2d 575 (2d Cir. 1988).

I am persuaded that the General Counsel has established that a motivating factor in the Respondent's actions against the employees was their protected concerted activities in joining the Union. This is supported by the record evidence that the Respondent was aware of the employees support and sympathy for the Union, the crucial timing of the Respondent's actions relative to the employees protected activities and this giving rise to an inference of the Respondent's animus towards the employees who engaged in such protested concerted activities. *Wright Line*, supra. Accordingly, the burden shifts to the Respondent to establish that its actions taken against the employees would have been taken even in the absence of their protected concerted activities. *Wright Line*, supra. The Respondent has failed to carry its burden in this regard.

The Respondent clearly made these changes the morning after the election and immediately after the employees had selected the Union as their representative. The Respondent's assertion that it changed the job duties of the nutrition supervisors based upon a preexisting plan was shown to be pretextual. Although Boire had stated prior to the union campaign that registered dieticians would perform assessments in the future through attrition, the evidence shows that Respondent did not intend to make this change on September 6, 2002. Respondent's own July 25, 2002 memo demonstrates that it did not have any immediate plan to change these unit employees jobs. It is clear that all of these changes would not have occurred absent the employees voting for the Union and the Respondent made the changes in retaliation for the employees making the decision to be represented by the Union. When an employer's motives are found to be false, the circumstances may warrant an inference that the true motivation is an unlawful one that the employer desires to conceal. It is clear that such is the instance here.

In view of all of the above, I find that the Respondent by its actions set forth in the complaint violated Section 8(a)(1) and (3) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICE ON COMMERCE

The activities of the Respondent set forth in section III, above, found to constitute unfair labor practices occurring in connection with the operations of the Respondent described in section I, above, have a close, intimate and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

V. THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent unlawfully, unilaterally made the following changes in the terms and conditions of employment of its employees in the unit found appropriate for the purposes of collective bargaining herein: changed a 1-hour lunchbreak to a 30-minute lunchbreak with two 15-minute breaks, time off was to be granted based on seniority order and only upon 2 weeks notice being given; required unit employees to punch a timeclock; changed the title of nutrition supervisor; and changed the job duties and regularly scheduled workday and hours of certain nutrition department employees in the unit, I shall recommend that the Respondent be ordered at the Union's request to rescind these changes and reinstate the terms and conditions of these employees as they existed prior to the election on September 5, 2002, and maintain these terms and conditions of employment until the Respondent and the Union bargain to agreement or good-faith impasse, and in the event an understanding is reached embody such understanding in a signed agreement. See *Winn-Dixie Stores*, 243 NLRB 972 (1979).

Further, the Respondent should be ordered to make whole unit employees for any loss of earnings or other benefits suffered as a result of the Respondent's above unlawful action in accordance with the Board's decision in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest computed as in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Because of the nature of the unfair labor practices found herein, and in order to make effective the interdependent guarantees of Section 7 of the Act, I shall recommend that the Respondent be ordered to refrain from in any like or related manner abridging any of the rights guaranteed employees by Section 7 of the Act. The Respondent should also be required to post the customary notice.

CONCLUSIONS OF LAW

1. The Respondent, Southside Hospital, is and has been at all times material herein an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and a healthcare institution within the meaning of Section 2(14) of the Act.

2. New York's Health & Human Service Union 1199, Service Employees International Union, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time, and regular part-time and per diem technical employees, clinical assistants, addiction counselors and nutrition supervisors employed by the Respondent at its Bay Shore facility but excluding all other employees, managers, guards and supervisors as defined in Section 2(11) of the Act.

4. On September 5, 2002, a majority of the employees in the unit selected the Union as their collective-bargaining representative in a Board election and on September 23, 2002, was certified by the Board as the exclusive collect-bargaining representative of the unit and has remained as by virtue of Section 9(a) of the Act.

5. By unilaterally making the following changes in the terms and conditions of employment of unit employees: by changing a 1-hour lunchbreak to a 30-minute lunchbreak with two 15-minute breaks; granting time off based on seniority order and only with 2 weeks notice being given; required unit employees to punch a timeclock; changed the title of nutrition supervisors-I and II and changed their job duties and regularly scheduled workdays and hours, without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to these changes, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, in violation of Section 8(a)(1) and (5) of the Act.

6. The Respondent engaged in unfair labor practices in violation of Section 8(a)(1) and (3) of the Act, by unilaterally unlawfully making the changes in the terms and conditions of employment of its unit employees listed in paragraph 5, above, because the employees of the Respondent joined and supported the Union and to discourage its employees from engaging in these activities and membership in a labor organization.

7. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

On these finding of fact and conclusions of law and on the entire record, I issue the following recommended[5]

ORDER

The Respondent, Southside Hospital, Bay Shore, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally changing a 1-hour lunchbreak to a 30-minute lunchbreak with two 15-minute breaks.

(b) Unilaterally granting time off based on seniority order with only 2 weeks notice given.

(c) Unilaterally requiring unit employees to punch a timeclock.

(d) Unilaterally changing the job titles of nutrition supervisors-I and II, their job duties and regularly scheduled workdays and hours.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request by the Union rescind the unilateral changes implemented by the Respondent in the terms and conditions of its employees in the unit set forth herein in September 2002 found to be unfair labor practices and reinstate the terms and conditions of employment which existed regarding its employees in this unit prior to the Board election on September 5, 2002; bargain with the Union in good faith until an agreement or impasse is reached; and the Respondent should be further ordered to make whole unit employees for any loss of earnings and benefits occasioned by the Respondent's unlawful actions in the manner set forth in the remedy section of this decision.

(b) In the event the Respondent's unfair labor practices result in the layoff, discharge, or other change in unit employee status the Respondent shall make whole any unit employees affected by such action for any loss of earnings or benefits in the manner set forth in the remedy section of this decision, and offer within 14 days of this Order such employees immediate reinstatement to their former jobs, if applicable, or if such jobs no longer exist to substantially equivalent positions without prejudice to their seniority or any other rights or privileges enjoyed by them.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful change in status of its employees due to the Respondent's above unlawful actions and any wage and benefit changes resulting therefrom, and within 3 days thereafter notify the employees in writing that this has been done and that the Respondent's unlawful actions will not be used against them in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional, Director for Region 29 may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Bay Shore, New York, copies of the attached notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director, after being signed by the Respondent's representative, shall be posted by the Respondent' and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to

[5] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

insure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail at its own expense a copy of the notice to all current employees and former employees employed by the Respondent since October 17, 2002.

(f) Within 21 days after service by the Region, file with the Regional Director for Region 29 a sworn affidavit of a responsible official on a form provided b y the Region attesting to the steps that the Respondent had taken to comply.

Dated, Washington, D.C. September 19, 2003

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT unilaterally change a 1-hour lunchbreak to a 30-minute lunchbreak with two 15-minute breaks.

WE WILL NOT unilaterally grant time off based on seniority order with only 2 weeks notice given.

WE WILL NOT unilaterally change the job titles of nutrition supervisors-I and II, their job duties and regularly scheduled workdays and hours.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL on request by the Union rescind the unilateral changes implemented by the Respondent in the terms and conditions of its unit employees in September 2002 found to be unfair labor practices.

WE WILL reinstate upon request by the Union the terms and conditions of employment of the unit employees prior to the Board election on September 5, 2002.

WE WILL within 14 days from the date of this Order offer employees who have been laid off, discharged, or otherwise suffered any change in position, duties or status full reinstatement to their former jobs and duties, of if those jobs or duties no longer exist, to a substantially equivalent position, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make employees whole for any loss of earnings and other benefits resulting from the Respondent's unlawful actions, less interim earnings where applicable, plus interest.

WE WILL, within 14 days from the date of this Order, remove from our files any references to the unlawful changes in the status of our employees due to our unlawful actions and any wage and benefit changes resulting therefrom, and within 3 day thereafter notify such employees in writing that this has been done and that the Respondents' unlawful actions will not be used against them in any way.

SOUTHSIDE HOSPITAL